

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

In re: ) Case No. 19-40883-659  
 ) Chapter 11  
PAYLESS HOLDINGS LLC, *et al.*, )  
 )  
 ) Jointly Administered  
Debtors. )  
 ) Related Docket No.: 5

**INTERIM ORDER (I) AUTHORIZING THE  
DEBTORS TO (A) PAY PREPETITION WAGES, SALARIES, OTHER  
COMPENSATION, AND REIMBURSABLE EXPENSES AND (B) CONTINUE  
EMPLOYEE BENEFITS PROGRAMS, AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)<sup>1</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an interim order (this “Interim Order”), (i) authorizing, but not directing, the Debtors to (a) pay prepetition wages, salaries, other compensation and reimbursable expenses, and (b) continue, in their discretion, certain employee benefits programs in the ordinary course of business, including payment of certain prepetition obligations related thereto, and (ii) granting related relief; all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and Rule 81-9.01(B)(1) of the Local Rules of the United States District Court for the Eastern District of Missouri; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors’ estates, their creditors, and other parties in interest; and this Court having found that the Debtors provided appropriate notice of the Motion and the opportunity for a hearing under the

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<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

circumstances; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the “Hearing”); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted on an interim basis as set forth herein.
2. The final hearing (the “Final Hearing”) on the Motion shall be held on March 14, 2019 at 10:00 a.m., prevailing Central Time, in Courtroom 7-North. Any objections or responses to entry of a final order on the Motion (the “Final Order”) shall be filed on or before 4:00 p.m., prevailing Central Time, on March 7, 2019 and shall be served on: (a) the Debtors, 3231 SE 6th Avenue, Topeka, KS 66607; (b) proposed counsel to the Debtors (i) Akin Gump Strauss Hauer & Feld LLP (Attn: Meredith A. Lahaie, Kevin Zuzolo and Julie Thompson), (ii) Armstrong Teasdale LLP (Attn: Richard W. Engel, Jr., Erin M. Edelman and John G. Willard) and (iii) Cassels Brock & Blackwell LLP (Attn: Ryan Jacobs, Jane Dietrich, Natalie Levine and Monique Sassi); (c) the Office of the United States Trustee for the Eastern District of Missouri; (d) the holders of the 50 largest unsecured claims against the Debtors (on a consolidated basis); (e) counsel to the Prepetition ABL Administrative Agent (i) Choate Hall & Stewart LLP (Attn: Kevin Simard, Douglas Gooding and Jonathan Marshall) and (ii) Thompson Coburn LLP (Attn: Mark Bossi); (f) counsel to the FILO Agent, Greenberg Traurig, LLP (Attn: Jeffrey M. Wolf); (g) counsel to certain Prepetition Term Loan Lenders (i) Kramer Levin Naftalis & Frankel LLP (Attn: Stephen D. Zide) (ii) Doster, Ullom & Boyle, LLC (Attn: Gregory D. Willard) (iii) Stroock & Stroock & Lavan LLP (Attn: Kristopher M. Hansen and Daniel A. Fliman) and (iv)

Lewis Rice LLC (Attn: Sonette T. Magnus); (h) counsel to the Prepetition Term Loan Agent, Norton Rose Fulbright US LLP (Attn: Stephen Castro and David Rosenzweig; (i) the proposed Monitor, FTI Consulting Canada, Inc. (Attn: Paul Bishop, Greg Watson and Jim Robinson); (j) counsel to the proposed Monitor, Bennett Jones LLP (Attn: Sean Zweig, Kevin Zych and Aiden Nelms); (k) counsel to any statutory committee appointed in the chapter 11 cases; (l) the United States Attorney's Office for the Eastern District of Missouri; (m) the Internal Revenue Service; (n) the United States Securities and Exchange Commission; (o) the state attorneys general for all states in which the Debtors conduct business; (p) any party that has requested notice pursuant to Bankruptcy Rule 2002; (q) UFCW Local 655; and (r) UFCW Local 536. If no objection or response is timely filed and served, the Court may enter the Final Order without need for the Final Hearing.

3. The Debtors are authorized, but not directed, to continue and modify the Employee Compensation and Benefits and to pay and honor prepetition amounts related thereto in an aggregate interim amount not to exceed \$19,506,500 in each case in the ordinary course of business and consistent with their prepetition practices; *provided* that pending entry of the Final Order, the Debtors shall not pay or honor any Employee Compensation and Benefits obligations that exceed the priority amounts set forth in Bankruptcy Code sections 507(a)(4) and 507(a)(5) and shall not pay or honor any prepetition amounts on account of Employee Expense Obligations that exceed the priority amounts set forth in Bankruptcy Code sections 507(a)(4) and 507(a)(5); *provided, further,* that pending entry of the Final Order, nothing herein shall be deemed to authorize the payment of any prepetition or postpetition amounts on account of, or the postpetition continuation of, Independent Director Compensation or any Non-Insider Severance

Programs; *provided, further*, that nothing in this Interim Order shall be deemed to authorize the payment of any amounts that are subject to Bankruptcy Code section 503(c).

4. Nothing in this Interim Order shall be deemed to authorize the Debtors to offer to Insiders or pay any amounts to Insiders on account of the Additional Compensation Opportunities, Non-Insider Severance Programs, or any other incentive compensation program.

5. Nothing in this Interim Order authorizes the Debtors to accelerate any payments not otherwise due prior to the date of the Final Hearing.

6. Pursuant to Bankruptcy Code section 362(d): (a) Employees are authorized to proceed with their workers' compensation claims in the appropriate judicial or administrative forum under the Workers' Compensation Programs, and the Debtors are authorized to pay all prepetition amounts relating thereto in the ordinary course of business; and (b) the notice requirements pursuant to Bankruptcy Rule 4001(d) with respect to clause (a) of this paragraph are waived. This modification of the automatic stay pertains solely to claims under the Workers' Compensation Programs.

7. The Debtors are authorized, but not directed, to pay any obligations that may arise and become due postpetition under the WARN Act.

8. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained in the Motion or this Interim Order or any payment made pursuant to this Interim Order shall constitute, nor is it intended to constitute, an admission as to the validity or priority of any claim or lien against the Debtors, a waiver of the Debtors' rights to subsequently dispute such claim or lien, or the assumption or adoption of any agreement, contract, or lease under Bankruptcy Code section 365.

9. Nothing in the Motion or this Interim Order shall impair the Debtors' or any other party-in-interest's ability to contest the validity or amount of any payment made pursuant to this Interim Order.

10. Notwithstanding the relief granted herein or any action taken hereunder, nothing contained in this Interim Order shall create any rights in favor of, or enhance the status of any claim held by, any Employee, Independent Contractor, Temporary Worker, Temporary Staffing Agency, Independent Director or other person or entity.

11. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized, but not directed, to receive, process, honor and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Interim Order.

12. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with any Employee Compensation and Benefits.

13. Nothing in this Interim Order shall alter or limit any authorization or relief contained in, or prevent Payless ShoeSource Canada Inc., Payless ShoeSource Canada GP Inc., or Payless ShoeSource Canada LP (the "Canadian Debtors") from taking any action authorized pursuant to an order issued by the Ontario Superior Court of Justice (Commercial List) (the "Canadian Court") in proceedings in respect of the Canadian Debtors pursuant to the *Companies' Creditors Arrangement Act* (Canada), and the Canadian Debtors shall be subject to a budget or

similar restrictions (including on amounts payable to Employees) only as established by the Canadian Court. To the extent of any inconsistency between this Interim Order and the terms of any order of the Canadian Court, the order of the Canadian Court shall govern with respect to the Canadian Debtors.


14. Notwithstanding anything to the contrary contained herein, any payment made or to be made under this Interim Order, any authorization contained in this Interim Order, or any claim for which payment is authorized hereunder, shall be subject to any orders of this Court approving any debtor in possession financing for, or any use of cash collateral by, the Debtors and the budget governing such debtor in possession financing and use of cash collateral.

15. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003.

16. Notice of the Motion satisfies the requirements of Bankruptcy Rule 6004(a).

17. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Interim Order are immediately effective and enforceable upon its entry.

18. No later than two (2) business days after the date of this Interim Order, the Debtors shall serve a copy of the Interim Order on the Notice Parties and is directed to file a certificate of service no later than 24 hours after service.

  
KATHY A. SURRATT-STATES  
Chief United States Bankruptcy Judge

DATED: February 20, 2019  
St. Louis, Missouri  
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**Order Prepared By:**

Richard W. Engel, Jr., MO 34641  
Erin M. Edelman, MO 67374  
John G. Willard, MO 67049  
**ARMSTRONG TEASDALE LLP**  
7700 Forsyth Boulevard, Suite 1800  
St. Louis, Missouri 63105  
Telephone: (314) 621-5070  
Facsimile: (314) 621-2239  
Email: [rengel@armstrongteasdale.com](mailto:rengel@armstrongteasdale.com)  
Email: [eedelman@armstrongteasdale.com](mailto:eedelman@armstrongteasdale.com)  
Email: [jwillard@armstrongteasdale.com](mailto:jwillard@armstrongteasdale.com)

Ira Dizengoff (*pro hac vice* admission pending)  
Meredith A. Lahaie (*pro hac vice* admission pending)  
Kevin Zuzolo (*pro hac vice* admission pending)  
**AKIN GUMP STRAUSS HAUER & FELD LLP**  
One Bryant Park  
New York, NY 10036  
Telephone: (212) 872-1000  
Facsimile: (212) 872-1002  
[idizengoff@akingump.com](mailto:idizengoff@akingump.com)  
[mlahaie@akingump.com](mailto:mlahaie@akingump.com)  
[kzuzolo@akingump.com](mailto:kzuzolo@akingump.com)

Julie Thompson (*pro hac vice* admission pending)  
**AKIN GUMP STRAUSS HAUER & FELD LLP**  
1333 New Hampshire Avenue, N.W.  
Washington, D.C. 20036  
Telephone: (202) 887-4000  
Facsimile: (202) 887-4288  
[julie.thompson@akingump.com](mailto:julie.thompson@akingump.com)

*Proposed Counsel to the Debtors and Debtors in Possession*